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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,835	03/21/2001	Darren R. Kerr	062891.0993	2952
5073	7590	02/27/2008	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				SWEARINGEN, JEFFREY R
ART UNIT		PAPER NUMBER		
2145				
			NOTIFICATION DATE	DELIVERY MODE
			02/27/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/812,835	KERR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey R. Swearingen	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 October 2007.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 and 8-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6 and 8-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/07 has been entered.

***Response to Arguments***

2. As a preliminary matter, Applicant rebuts the statement in the previous office action that "...Applicant did not claim an accounting record." Remarks, 10/30/07, page 5. Applicant mischaracterized this statement and failed to rebut the entire statement made in the Final Rejection. Final Rejection, 9/17/2007, page 2, paragraph 3 states "Applicant argued that Arango failed to teach *generating an accounting record*. Applicant admits that Arango discloses ascertaining which party will pay for the session. This is all the claim requires. Applicant did not claim an accounting record 'where packets are tracked or a cumulative number of bytes are systematically recorded.'" For purposes of clarity of the record and as a courtesy to Applicant, Applicant is reminded that there was not a mistaken statement in the rejection of 9/17/07 solely stating "...Applicant did not claim an accounting record." There was a statement that Applicant did not claim an accounting record where packets are tracked or a cumulative number of bytes are systematically recorded. The two statements are different and related to patentability issues. Applicant's newly amended claims adding the limitation "the accounting record including a time stamp for a first packet in the first one message, a time stamp for a recent packet in the first one message, a cumulative count for a number of packets in the first one message, and a cumulative count for a number of bytes in the first one message" overcome Arango because of this amendment.

3. Applicant's arguments with respect to claims 1-6 and 8-18 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 14 are amended to state the accounting record includes a *time stamp for a first packet in the first one message, a time stamp for a recent packet in the first one message, a cumulative count for a number of packets in the first one message, and a cumulative count for a number of bytes in the first one message*. Applicant's specification, page 16, lines 12-17 has a different definition for the stored accounting information. "The accounting information comprises a time stamp for the first packet 150 in the message flow 160, a time stamp for the most recent packet 150 in the message flow 160, a cumulative count for the number of packets 150 in the message flow 160, and a cumulative count for the number of bytes 150 in the message flow 160." Applicant's specification details collecting accounting information for a "message flow", which is a "unidirectional stream of packets 150 to be transmitted between particular pairs of transport service access points (thus, network-layer addresses and port numbers). In a broad sense, a message flow 160 thus refers to a communication 'circuit' between communication endpoints."

Specification, page 6, lines 5-10. A message flow is not the same as a *first one message*, as a message flow accounting record deals with all traffic over a particular circuit and a first one message accounting record deals with all traffic for that specific first one message. Subsequently, Applicant failed to provide adequate support in the specification for an accounting record for a *first one message* which includes a *time stamp for a first packet in the first one message, a time stamp for a recent packet in the first one message, a cumulative count for a number of packets in the first one message, and a cumulative count for a number of bytes in the first one message*.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6 and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arango (US 5,732,078) in view of Dobbins et al. (US 5,951,649).

8. In regard to claims 1 and 14, Arango disclosed:

*identifying, by a routing device, a first one message of a first plurality of messages, said first plurality of messages having at least one first routing treatment in common; Arango, column 11, lines 2-5*

*recording said first routing treatment, the routing treatment comprising switching information that determines an output port for switching packets, wherein said step of recording comprises building an entry in a flow cache, the routing device generating an accounting record for the first message and determining an encryption treatment for the first message; Arango, column 11, lines 15-55*

*identifying a second one message of said first plurality of messages; Arango, column 11, lines 53-55*

*routing said second one message responsive to said first routing treatment. Arango, column 11, lines 53-55.*

Arango failed to disclose the accounting information includes a time stamp for a first packet in the first one message, a time stamp for a recent packet in the first one message, a cumulative count for a number of packets in the first one message, and a cumulative count for a number of bytes in the first one message. Dobbins, in the analogous field of art of monitoring packet flows and forwarding packets, discloses aggregate counting techniques for packet information over a specific port in a router. Dobbins, column 22, lines 34-64. It would have been obvious to one of ordinary skill in the art to include standard network management techniques such as monitoring throughput statistics such as times of packets and byte and packet counts

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over a specific port or flow as in Arango in order to monitor network traffic and account for usage as well as for network security purposes.

9. In regard to claim 2, Arango disclosed:

*said first one message comprises a packet; column 11, line 4*

*said first plurality of messages comprises a stream of packets associated with a selected source device and a selected destination device. Column 11, lines 4-5*

10. In regard to claim 3, Arango disclosed:

*said stream of packets is associated with a first selected port number at said source device and a second selected port number at said destination device. Inherent to the establishment of a routed packet stream. A router connects to another router via a port on each router. The designation of a connection between the two routers implies the use of the two ports.*

11. In regard to claim 4, Arango disclosed:

*said first plurality of messages comprises a message flow. Communication session in column 11, line 5*

12. In regard to claim 5, Arango disclosed:

*said first plurality of messages comprises an ordered sequence, and said first one message has a selected portion in said ordered sequence. All TCP/IP packets are numbered.*

13. In regard to claim 6, Arango disclosed:

*said first plurality of messages comprises a stream of messages between a selected pair of transport access points. Column 11, line 5*

14. In regard to claim 8, Arango disclosed:

*identifying a message of a second plurality of messages, said second plurality of messages having at least one second routing treatment in common, said second routing treatment differing from said first routing treatment. Column 11, lines 53-55*

15. In regard to claims 9 and 15, Arango disclosed:

*said routing treatment comprises access control information for said first one message.*

Column 11, lines 15-23

16. In regard to claims 10 and 16, Arango disclosed:

*said routing treatment comprises a destination output port for routing said first one message. A router connects to another router via a port on each router. The designation of a connection between the two routers implies the use of the two ports*

17. In regard to claims 11 and 17, Arango disclosed:

*recording information about said first plurality of messages; and  
transmitting said information to at least one selected device on said network. This is the use of routing tables. See column 12, lines 15-52*

18. In regard to claims 12 and 18, Arango disclosed:

*a transmission time for an initial one message in said plurality of messages;  
a transmission time for a most recent one message in said plurality of messages;  
a cumulative count of bytes in said plurality of messages; or  
a cumulative count of said one messages in said plurality of messages. Column 11, line 13 requires the use of a time stamp for either an initial message or a most recent message since the communication session is "time-sensitive."*

19. In regard to claim 13, Arango disclosed:

*receiving said information at said selected device on said network;  
recording said information in a database at said selected device; and  
making said information available to a second device on said network. Column 12, lines 20-25*

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen  
Examiner  
Art Unit 2145

JRS

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